

REMARKS

In this most recent Action, the Examiner maintained the rejection of many of the claims based upon U.S. Patent 5,824,389 to Rostoker, under 35 U.S.C. §102 for alleged anticipation. The Examiner also maintained the previous rejection of claims under 35 U.S.C. §103 for alleged obviousness based upon the '389 patent to Rostoker.

It is respectfully requested that the Examiner reconsider the grounds of the previous rejections.

In support of the rejections based upon the '389 patent to Rostoker, the Examiner asserted:

The reference [the '389 patent] teaches the use of traveling waves to move particles. With regards to Fig. 6A, the reference states that a "particle near the aperture 630 can be accelerated (caused to move) through the aperture by application of appropriate accelerating potentials to the two conductive layers 610 and 612." The teaching of appropriate accelerating potentials – cyclical out of phase voltages applied to the electrodes – is set forth in the reference (col. 4, lines 50+).

Page 3 of the Office Action.

All pending claims at issue recite a first voltage at a first electrode and a second, opposite voltage to the second electrode. This "bipolar voltage" is illustrated in Fig. 11 and paragraphs 0073-0077 of the present application.

The Examiner relies upon Fig. 6A of the '389 patent and a corresponding passage in that patent that:

An electrostatically charged particle near the aperture 630 can be accelerated (caused to move) through the aperture 630 by application of appropriate accelerating potentials to the two conductive layers 610 and 612.

Col. 9, lines 10-15.

This passage fails to disclose, and entirely fails to teach, the use of the claimed "bipolar voltage" strategy in which two opposite voltages are applied to two electrodes.

The Examiner points to col. 4, lines 50+ in the '389 patent for allegedly disclosing or teaching this aspect. However, Applicant has carefully studied the cited passage and is unable to discern the Examiner's claim. The mere mention of applying "appropriate accelerating potentials" to two conductive layers does not teach the application of two opposite voltages to two electrodes, and indisputably fails to anticipate that claimed feature. The most that the cited passage in column 4 discloses, is that:

The voltages are cyclic in nature and are offset from one another in phase.

Col. 4, lines 54-55 of the '389 patent.

Moreover, this passage refers to a "conveyor" structure shown in Fig. 1a in which the voltages are successively applied to adjacent electrodes that result in the generation of a traveling wave moving across the length of the conveyor.

This conveyor system and manner of application of voltages to electrodes, is entirely different than the recited systems for selectively sorting particles using a series of gated apertures.

With regard to claims 33-36, it is also respectfully noted that those claims recite, in part, a "continuous particle supply apparatus." Rostoker entirely fails to disclose or teach this aspect.

It is respectfully requested that the Examiner reconsider the present rejections, so that an appeal will not be required.

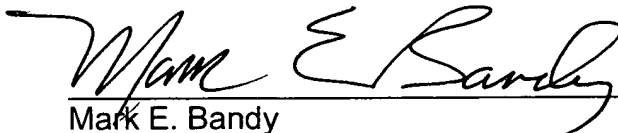
Although Applicant traverses the withdrawal of claims 28-32, those claims are hereby cancelled so as to place the present application in appropriate form if an appeal is taken.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to call Mark E. Bandy, at Telephone Number (216) 861-5582.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP

September 25, 2006
Date


Mark E. Bandy
Reg. No. 35,788
1100 Superior Avenue, 7th Floor
Cleveland, Ohio 44114-2579
(216) 861-5582